No. 92-1699

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

Supreme
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OFFICE OF THE CLERK

JOHN C. JUSTICE and STEVEN T. LYNCH,

Petitioners,

vs.

Lt. JERRY SUITS, Corrections Officer, Illinois Department of Corrections,
JUDSON CHILDS, Assistant Warden of Shawnee Correctional Center,
Pfc. D.R. FRIEDMAN, Officer, Illinois State Police,
DAVID G. SANDAHL, Warden of Shawnee Correctional Center,
GARY RICH, Internal Affairs Officer of Shawnee Correctional Center,
MICHAEL P. LANE and KENNETH L. McGINNIS, Former Directors, Illinois Department of Corrections,
HOWARD PETERS, Director of the Illinois Department of Corrections,
and UNKNOWN EMPLOYEES OF SHAWNEE CORRECTIONAL CENTER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

with

SUPPLEMENTARY APPENDIX

John C. Justice, *in propria persona*
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Cicero, Illinois 60650
708-656-3250

Steven T. Lynch, N-04276, *in propria persona*
Illinois River Correctional Center
Box 1900
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QUESTIONS PRESENTED FOR REVIEW

I.. Did the Seventh Circuit err in holding that the staff of a State prison may conduct searches of visitors' vehicles which remain outside the confines of the prison?

II.. Did the Seventh Circuit err in holding that deprivation of visitation by the only friend who had visited an inmate routinely over a period of years is not cruel and unusual punishment when deprivation of visitation is the proximate cause of the inmate's transferral to Menard Psychiatric Center?

III.. Did the Seventh Circuit err in holding that non-incarcerated persons are devoid of any right of visitation with incarcerated friends and relatives?

LIST OF PARTIES

John C. Justice was a plaintiff below and is a petitioner in this Court.

Steven T. Lynch is an inmate in the custody of the Illinois Department of Corrections. He was a plaintiff below and is a petitioner in this Court.

Lieutenant Jerry Suits and Gary Rich are employees of the Illinois Department of Corrections. They were defendants below and are respondents in this Court.

Pfc. D.R. Friedman, is an officer of the Illinois State Police. He was a defendant below and is a respondent in this Court.

David G. Sandahl is the warden of Shawnee Correctional Center and an official of the Illinois Department of Corrections. He was a defendant below and is a respondent in this Court.

Judson Childs is an assistant warden of Shawnee Correctional Center and an official of the Illinois Department of Corrections. He was a defendant below and is a respondent in this Court.

Michael P. Lane and Kenneth L. McGinnis are former directors of the Illinois Department of Corrections. They were defendants below and respondents in this Court.

Howard Peters, successor to Kenneth L. McGinnis as director of the Illinois Department of Corrections is added as a respondent in this Court pursuant to Rule 35.3.

Unknown Employees of Shawnee Correctional Center were defendants below and respondents in this Court.

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PETITIONERS' REPLY TO BRIEF IN OPPOSITION

I

REPLY TO RESPONDENTS' INTRODUCTION

Petitioner Justice did not "express his disapproval" to the unconstitutional searches at Shawnee Correctional Center, he objected. He objected, not "objected", and that has a clear and significant legal connotation and denotation with which the Respondents undoubtedly are familiar.

REPLY TO RESPONDENTS' ASSERTION THAT THE COURT OF APPEALS CORRECTLY HELD THAT PETITIONER JUSTICE'S FOURTH AMENDMENT RIGHT WAS NOT VIOLATED WHEN HE WAS REQUIRED TO SUBMIT TO A SEARCH OF HIS VEHICLE UPON ENTERING AN ILLINOIS DEPARTMENT OF CORRECTIONS FACILITY.

Petitioner Justice's vehicle did not enter an Illinois Department of Corrections facility; it remained, or would have remained, outside the confines of the prison. Justice himself would have been thoroughly searched after entering the confines of the prison.

The Court of Appeals for the Seventh Circuit statement (Appendix, p. 253, quoted by the Respondents at p. 5) that "because of the wide-ranging deference to be accorded prison administrators, the burden is not on the prison officials to show affirmatively that its policy or action meets [legitimate penological] objectives." This gives prison officials, based on their own self-serving assertions of good intent, the power to violate all rights of both visitors and inmates until the violations become so outrageous as to shock the conscience of the Court.

Each time Petitioner Justice's vehicle was searched, it was a rental car. Justice has no idea what previous users of rental cars may have left in them, but he is almost certain that had he not objected and had "contraband" been found there, he would be petitioning as an

incarcerated person, much as the defendant in one of the cases cited by the Respondents, U.S. v. Patrick Donald Ward, 431 F.Supp. 66 (W.D. Oklahoma 1976), who "knew his rights" but disingenuously retrieved bags of marijuana from his car within the prison gates and without objection on his part.

The counsel for the Respondents misconstrues the opinion, stating that (R.B.I.O. p. 7) "the search of a visitor's car while parked in prison parking lot did not constitute unreasonable search," where the Court in U.S. v. Patrick Donald Ward, 431 F.Supp. 66 at 69 (W.D. Oklahoma 1976), disavows that a search even took place because Ward signed a waiver of rights prior to the disclosure of the marijuana and removed the contraband from his car himself.

The case immediately preceding U.S. v.

Ward, 431 F.Supp. 66 (1976), U.S. v. Billy Wayne Myers and Joyce Ann Weeks, 431 F.Supp. 64 at 66 (W.D. Oklahoma 1976), says, "It is well established that the need to maintain prison security and discipline provides the basis for dispensing with the warrant and probable cause requirement when conducting a search within the confines of a penal institution." (Emphasis added.)

The Respondents cite People v. Turnbeaugh, 116 Ill. App. 3d 199, 451 N.E.2d 1016 (5th Dist. 1983) as holding that the governmental interest in keeping contraband out of penal institutions outweighs the substantial intrusion of searching visitors' vehicles. The Court rejects the opinions of other State Courts as, e.g., People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974) where the Colorado Supreme Court held (185 Colo. 208, 211; 523 P.2d 128, 130) that the

evidence should have been suppressed because it was "[U]nable to detect anything approaching a semblance of probable cause to search." And rejects the opinion in Jordan v. Wolke, 450 F.Supp. 213, 215 (E.E. Wis. 1978) which held that jail visitors must be informed that they may refuse to be searched but will thereby forfeit the opportunity to visit.

Because all trends may begin in California and work their way eastward, the case of Estes v. Rowland, 17 Cal.Rptr.2d 901 (Cal.App. 1 Dist. 1993), cited by the Respondents, is worthy of careful consideration. The Respondents (R.B.I.O. p. 7) selectively report that the case states that, "the use of dogs to search visitors' vehicles as they enter correctional center did not exceed reasonableness contemplated under the Fourth Amendment."

Most importantly, the trial Court in Estes v. Rowland (Estes v. Rowland at 904) ruled that Mathis v. Appellate Department, 28 Cal.App.3d 1038, 105 Cal.Rptr. 126 (1972) required that the Court find the searches were conducted pursuant to the visitors' consent. The trial Court required prison officials, "2. Immediately prior to a proposed search the driver of each vehicle must be informed orally and in writing (... in both English and Spanish) of what the search will entail, the reasons for it, and the consequences of finding contraband. The notice must advise the driver that he or she has the option of leaving and returning without the car without losing visiting privileges for that day. Searches may be conducted only after written consent for the search is first obtained from the driver." Estes v. Rowland at 905. (Emphasis added.)

On appeal, the California Department of Corrections did not challenge the rectitude of that paragraph of the injunction, and the Court of Appeal did not modify it. Estes v. Rowland at 911, footnote 11.

If as the Respondents allege, "the denial of prison access to a particular visitor is 'well within the terms of confinement ordinarily contemplated by a prison sentence,'" citing Kentucky Department of Corrections v. Thompson, 490 U.S. 454 at 461 (1989), the denial of prison access must have some more significant basis than the visitor's objection to the constitutionality of what was being done to him.

Justice did not attempt to "evade security safeguards by parking his car outside the institution." Everyone parked his car outside the institution. Justice attempted to moot the prison

staff's insistence on unconstitutional searches by parking his car outside their jurisdiction on private property in the shade. All cars were parked outside prison gates. None presented security risks any more than any of the other 364 days of the year. If Petitioner Justice were plotting an escape--which has never been discussed and becomes diminishingly unlikely with every passing day as Lynch's January 11, 1999, out-date approaches--Justice could have brought two cars and parked one out of sight. The Respondents' hypothesis is fatuous: all cars were parked outside.

The Respondents' argument regarding the security of vehicles in the prison parking lot outside the confines of the prison begs the question: if those vehicles are secure what is the purpose of searching them? As in Marriott by and through Marriott v. Smith, 931 F.2d 517

(8th Cir. 1991), the purpose is to catch visitors in a crime.

The Petitioners have been remiss in failing to supply a diagram which would clarify the issues before us. It is obvious that the Respondents' counsel either does not understand the primary issue, or are trying to becloud and confuse. See the Supplementary Appendix.

In the scheme laid out by the prison staff, all vehicles turn right and all passengers and the driver stand aside. If the search of the vehicle is uneventful the passengers who have not been searched proceed to the welcoming desk with a photograph-identification card and sign in. The driver, who has not been searched, removes the Uzi and kilo of cocaine from his or her skirt, slips it under the seat and drives to the parking area which is outside the confines of the prison. His or her purse

was not searched in the vehicle search and remains unsearched in the vehicle. All personal non-clothing belongings except identification cards are locked in the vehicle in which the visitors arrived. The key is kept by the welcoming committee in a sealed envelope. Visitors enter a waiting room through an electrically-locked door which is then closed and locked before a second door admits them to the waiting room. All doors are controlled by guards in isolated window-walled rooms. Visitors are admitted one by one or in family groups to the search area. After a thorough pat-down search and exam of shoes and belt, a visitor goes through a metal detector. Following this search, which completely obviates the vehicle search, visitors pass through six isolation-controlled doors which allow passage through only one door which is

then closed and locked before another is opened.

20 Ill. Adm. Code § 501;220(a)(1) (1992) MAY CLEARLY STATE THAT ALL PERSONS, VEHICLES AND ITEMS COMING ONTO STATE PROPERTY ARE SUBJECT TO A SEARCH, BUT THAT DOES NOT MAKE IT CONSTITUTIONAL

In People v. Turnbeaugh, 116 Ill. App. 3d 199, at 201 (5th Dist. 1983), a sign similar to the one at Shawnee Correctional Center was posted. Guard Garland Reed said that he would not have searched Turnbeaugh's vehicle if the defendant had objected or chosen to back out of the search. Turnbeaugh was convicted of unlawful possession of cannabis and with bringing contraband into a State penal institution.

In U.S. v. Billy Wayne Myers and Joyce Ann Weeks, 431 F.Supp. 64 at 66 (W.D. Oklahoma 1976) prison staff did not even

conduct a search of defendant Weeks, though similar signs were posted at the entrance. Defendant Weeks was interviewed and searched by Federal Bureau of Investigation Agent George Zeigler after signing a waiver of rights.

In U.S. v. Patrick Donald Ward, 431 F.Supp. 66, 68 (W.D. Oklahoma 1976), a similar sign at the entrance to the parking lot gave notice that all persons and packages are subject to search. The same Agent Zeigler had the defendant sign a waver of rights prior to search.

In Estes v. Rowland, 17 Cal.Rptr.2d 901 at 912 (Cal.App. 1 Dist. 1993) the Court held that, "The notice requirements imposed by the [trial] court were a proper device that increased the probability of acquiring informed and voluntary consent and enhanced the deterrent effect of the searches." The searches at State prisons in California

are reportedly truly consensual (supra, p.6) with drivers of vehicles allowed to leave, park outside the prison property, and return at once for a visit. This contrasts markedly with Lt. Jerry Suits assertion (Appendix, p. 39) when objection was made that, "The Constitution's got nothing to do with it: we're demanding that you give us your permission to search your car."

The Illinois Administrative Code, Title 20: Corrections, Criminal Justice, and Law Enforcement, Chapter I: Department of Corrections, Subchapter a: Administration and Rules, gives as its authority Illinois Revised Statutes, Chapter 38. Nowhere does the Legislature authorize the usurpation of plenary powers disregarding the Constitution or the Constitution of the State of Illinois.

II

PETITIONER LYNCH'S MEDICAL CONDITION AND CRUEL AND UNUSUAL PUNISHMENT

Petitioner Lynch never alleged facts relating to his medical condition and treatment as a result of denial of visitation to Petitioner Justice because there was no medical condition or treatment when he was not denied visitation.

Had a multitude of stressful conditions not occurred concomitantly with denial of visitation it is probable that no medical condition would have developed. If Petitioner Lynch had no friend whatsoever it is probable that no medical condition would have developed. Lynch's attorneys had successfully sought a writ of habeas corpus, the granting of which was being appealed by the State. The uncertainty of the outcome of that combined with searches of his legal

papers by prison staff, starvation to protect the papers while he destroyed them, lack of family support, and the cruel and unusual punishment of denial of visitation resulted in a "medical condition."

Even if this Court grants certiorari and gives redress and relief for the abused masses of visitors and their imprisoned friends and relatives it will be a pyrrhic victory for Petitioners Lynch and Justice. Neither would voluntarily retrace his course.

CONCLUSION

This Court should grant its Writ of Certiorari to the Seventh Circuit Court of Appeals to address issues of substantial abuse of search procedures which vary markedly from State to State and have been ameliorated in California only through painful effort on the part

of many visitors. The injuries in Illinois have not been addressed except by these Petitioners, but they are many and continuing. In those untried cases the injuries to prisoners constitute cruel and unusual punishment which may have evident effect only when exacerbated as was the case for Petitioner Lynch.

The issues merit addressing by this Court.

Respectfully submitted,

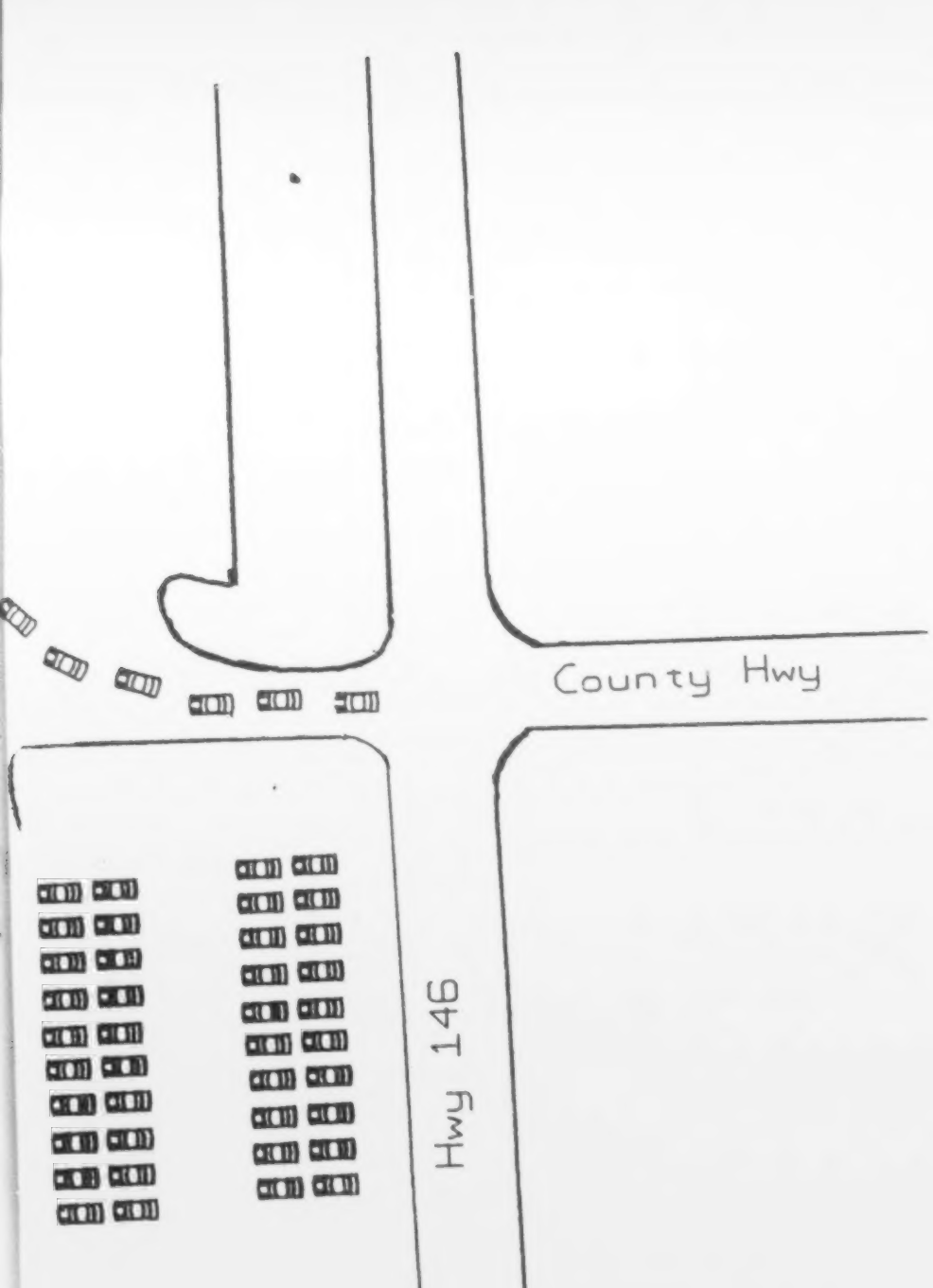
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SUPPLEMENTARY APPENDIX

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Picnic
Area
N
M
M



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A ELECTRICALLY LOCKED DOOR

B GLASS-WALLED GUARD ENCLOSURE

C FOOD MACHINES & MICROWAVE OVEN

D GUARD'S PLATFORM & DESK

E PRISONER'S TOILET

F VISITORS' TOILETS

G VISITING TABLES AND CHAIRS

H TABLES AND BENCHES

I SEARCH ROOMS

J METAL DETECTOR

K WAITING ROOM

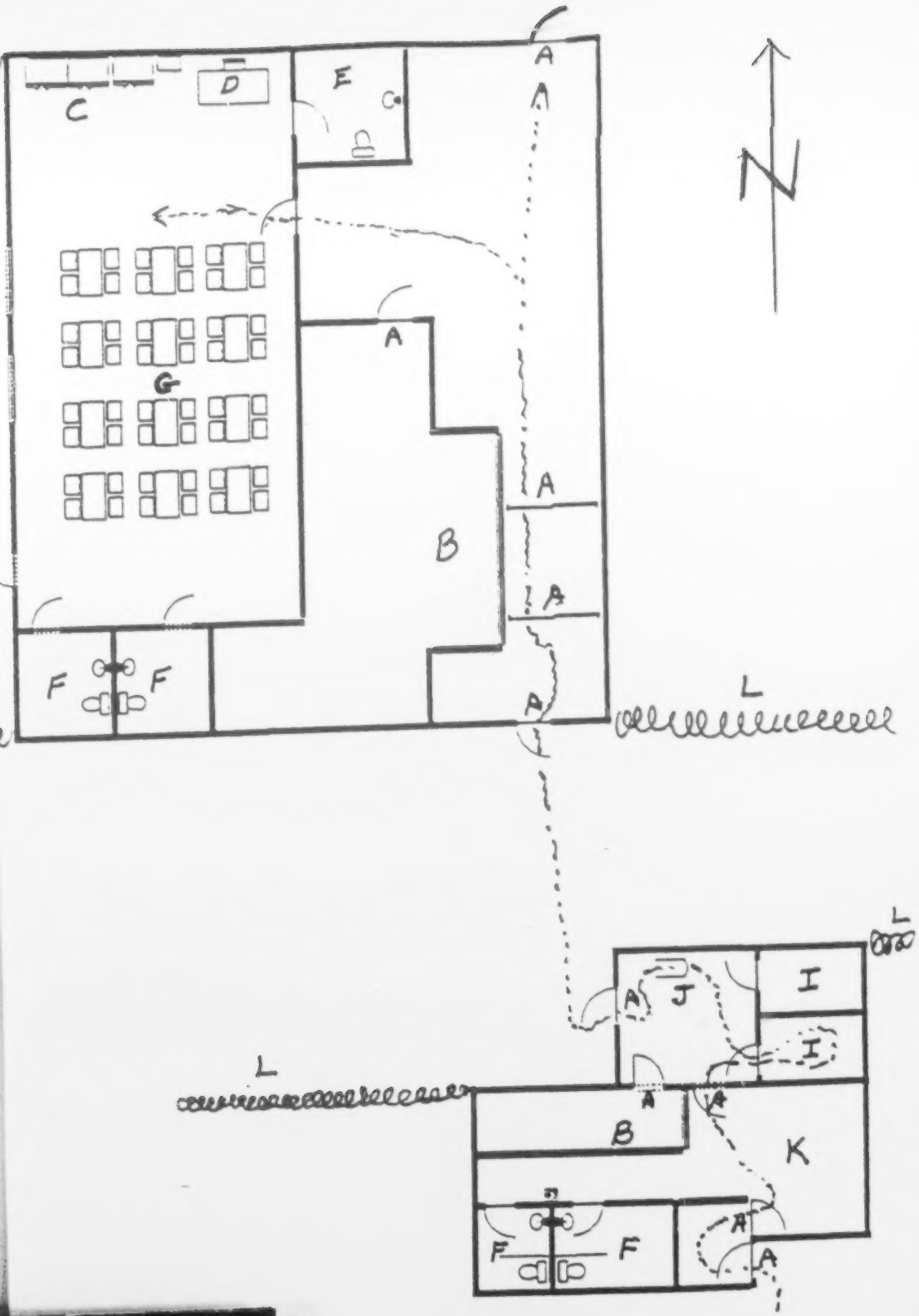
L 12-FOOT HIGH RAZOR-WIRE FENCE

M GUARD TOWER



ALL PEDESTRIAN TRAFFIC, BOTH PRISON PERSONNEL AND VISITORS, PASS THROUGH THE DOORS OF THE GATEHOUSE AND VISITING HOUSE.

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